

# UTAH SCHOOL LAW UPDATE

Utah State Office of Education

November 2004

## THE RESULTS ARE IN

Election results are in, and education won and lost.

As anyone who has paid even remote attention to the election knows, George W. won re-election. No major changes were made in the U.S. House and Senate, so we can all rest assured there will be few, if any, meaningful changes to NCLB.

On the local front, John Huntsman, Jr. was selected as governor of Utah. In his campaign, Huntsman noted that he would support the Carson Smith Scholarship bill, vetoed by Gov. Olene Walker. Huntsman has also been a vocal supporter of tuition tax credits. He has also pledged to hold firm to the practice of putting the cart of economic development before the horse of education funding.

In the legislative branch, the Utah Senate remains relatively unchanged, though Fred Fife, a longtime supporter of public education, reclaimed Sen-



ate District 1 for the Democrats. Fife ousted Sen. James Evans.

Cora Lee Jckowski, an elementary school principal in Jordan District, made valiant strides against incumbent Sen. Michael Waddoups. As a newcomer to the political scene, Ms. Jckowski posted a respectable 40% of voters to Waddoups' 57% (3% went to

other party candidates).

Newcomer Lew Garrett posted similar numbers against Sen. Carlene

Walker, garnering 43% of the vote to Walker's 57%.

Education fared better in the house. We lost Rep. Eli Anderson, a supporter, but the victor in the race is

Ronda Rudd Menlove, a former public school educator, current university administrator and wife of Box Elder Superintendent Martell Menlove.

Many educators were also relieved to see education foe Rep. Chad Bennion of Murray lose his seat in a decisive win by Tim Cosgrove, a strong supporter of public education.

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#### **UPPAC CASES**

- The Utah State Board of Education accepted a stipulated agreement for an 18 month suspension of Michael. D. Smith's license. Mr. Smith's suspension results from his arrest for lewdness.
- The State Board revoked the license of James K. McQuade for inappropriate conduct with students.
- The State Board accepted a stipulated agreement suspending the license of Joshua Barnett following his plea to burglary and possession of a controlled substance.
- The Board accepted a stipulated agreement revoking Lee Henrikson's license for alcohol related offenses involving students.
- The Board accepted a stipulated agreement revoking Jaelee Heupel's license following her plea to six felony charges of illegal sexual conduct.

## **UPPAC** Case of the Month

Many UPPAC cases involve conduct that also leads to criminal charges. Prosecutors may offer Educators in these situations the opportunity to enter into a plea agreement.

As the educator weighs the plea, attorneys on either side may offer advice about the effect of the plea on the UPPAC case.

But oftentimes, a crimi-

nal attorney, defense or prosecution, is unfamiliar with UPPAC and does not understand that a criminal plea agreement does not lessen the impact of the conduct for UPPAC.

The most common plea agreement that UPPAC receives from the courts is a Plea in Abeyance. In this agreement, the educator admits responsibility for his or her actions by signing a conviction paper stating that he or she is guilty of a charge.

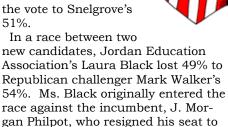
The guilty plea, however, is not entered into the court record. Instead, the judge hold on to the conviction paper signed by the educator for a set period of time. If the educator meets all other terms of the agree-

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### Eye On Legislation

Education also gained Mark Wheatley who ran for the seat vacated by the remarkable Rep. Judy Ann Buffmire.

Another friend of education, Rep. Roz McGee, retained her seat in a closely fought battle against a well-known challenger, Richard Snelgrove. In the end, Rep. McGee received 55% of the vote to Snelgrove's 51%.



pursue a law degree outside of the

state.



The State School Board will see four new members. Mark Cluff beat out David Adamic and a write-in campaign

from incumbent Mike Anderson to join the board in District 12. Thomas Gregory will take over the District 13 seat, vacated by Linnea Barney. At 25-years of age, Mr. Gregory has the distinction of being the youngest person ever elected to the state school board. District 4 will be filled by Richard Sadler, a college professor who ran unopposed, and District 11 will be filled by Bill Colbert, a tuition-tax credits supporter.

Supporters of education had their first experience with a new lobbyist group throughout the course of the election. Parents for Choice sent out negative pieces against candidates in a few key state legislative races. The pieces attacked the selected candidate and an unnamed "liberal tax and spend union."

Common wisdom is that the unnamed union is actually the Utah Education Association which was also characterized by Parents for Choice as a "special interest" group (some in UEA were heard to remark that this is akin to the pot calling the kettle black, while others were pleased to represent the special interests of public school kids).

Republicans also spent a portion of the Monday before the election responding to another new political action committee, Truth in Politics. This group sent out three fliers detailing the shenanigans of a number of Republican elected officials, including Rep. Lavar Christensen, Sen. Chris Buttars, Sen. Michael Waddoups, former Rep. Chad Bennion, Rep. Greg Curtis, former Sen. James Evans, former Mayor Nancy Workman, and a few others.

#### **Recent Education Cases**

Elaskamp v. Dearborn Public Schools, (C.A.6 2004). A teacher made the curious argument that he had an associational right to engage in a sexual relationship with a student within nine months after she graduated from high school.

The court held that the school board could rationally conclude that the relationship began before the student graduated and had a legitimate interest in prohibiting such a relationship. The court upheld the

teacher's termination from employment based on the relationship. Moral of the story:

DON'T DATE (or "hang out" with)
STUDENTS!
McElroy v. Board of

Educ., (N.Y. Sup.

2004). The board's

decision to reassign high school football coaches from classroom to

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non-classroom duties, without a cut

in pay, benefits or a change in terms of employment, was not disciplinary action. The coaches were taken out of their classrooms following a hazing scandal with the team that included assault and sexual abuse.

The court upheld the board's decision to move the coaches without following New York's disciplinary procedures because the new

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#### **UPPAC** cases cont.

(Continued from page 1)

ment, the guilty plea never goes on the educator's record and the case is dismissed at the end of the abeyance term.



If the educator fails to meet the terms, the judge enters the plea and sentences the educator based on the guilty plea.

During the abeyance term, the educator has an open court case

against him or her. The prosecutor is responsible for reporting any missteps by the educator that violate the agreement and the court can enter the guilty plea at any time.

In short, a plea in abeyance is an admission of responsibility for the crime charged, and UPPAC considers it as such. While the court has given the educator an opportunity to get help for whatever behavior led to the charge, UPPAC is typically unwilling to allow an educator who is subject to a plea agreement to continue serving as a role model for stu-

dents.

In the usual scenario, UPPAC will seek a suspension of the educator's license until he or she has gotten the court ordered therapy and/or met the other terms of the agreement. UPPAC may also impose its own requirements on the educator during the term of suspension. At the end of the term, the educator can petition for a reinstatement hearing and, if granted, provide evidence of all the educator has done in the meantime to ensure the criminal behavior is not repeated.

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## **UPPAC Member Profile—**

Bruce Jeffries has taken a varied route through the education profession.

He attended Cal Poly and BYU, securing his first teaching job in Oregon just before his graduation from BYU. Mr. Jeffries taught special education his first year and spent the following seven years teaching French.

Mr. Jeffries then left the school environment to work in Illinois as a state director with the Foreign Study League. Five years later, "weary of the incessant travel and aware of its costs to family life," he returned to Utah and joined the insurance business. Mr. Jeffries worked the evening family market, so he began substitute teaching during the day in Jordan District.

Soon after, Mr. Jeffries was offered a

Bruce Jeffries

full time position as a French teacher at Albion Middle School. He accepted and has been with Jordan District ever since. He currently teaches French and English at Copper Hills High School and hopes to put his counseling degree to good use as well.

Ever busy, Mr. Jeffries built the home he and his wife share with a "fierce but lovable" border collie, an acre of fruit trees and some chickens. He enjoys traveling and time spent with his ten children and twelve grandchildren.

Mr. Jeffries has served on the Commission since July 1999.

## **Your Questions**

Q: Can a teacher be compelled to recite the Pledge of Allegiance with his or her class?

A: Not necessarily. A teacher does have a free speech right to refuse to recite the pledge. However, like his or her students, the teacher can't exercise his rights in a manner that disrupts the classroom.

A teacher who does not want to recite the pledge should maintain a respectful environment during the recitation of the pledge and not discourage or encourage any student What do you do when...?

to join in.

Q: If a parent asks for a copy of my resume, must the school provide it?

A: In a word, yes. The information that is typically included on a resume is public information.

Under the Utah Government Re-

cords and Management Act (GRAMA), a public body must disclose the following information, if requested:

names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees.

## Recent Cases Cont.

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duties fell within the coaches' tenure areas.

Professional Standards Commission v. Valentine, (Ga. App. 2004). The court upheld the Georgia Professional Standards Commission to suspend the license of a teacher whose anger got the better of him.

The teacher had two altercations on school grounds where he cursed and threatened physical violence. He also engaged in uncontrolled angry outbursts. The educator blamed the incidents on emotional problems he was experiencing.

The court upheld the commission's finding that the teacher's ability to "function professionally as an educator" was seriously impaired by his angry conduct.

Holloman v. Walker County Bd. Of Educ., (N.D. Ala 2004). A teacher and principal acted appropriately when they disciplined a student for silently raising a clenched fist during recitation of the Pledge of Allegiance. The teacher and principal imposed "mild punishment" for the student's disruptive conduct.



This ruling follows an 11th Circuit Court of Appeals ruling against the district court's earlier decision that the teacher and principal had qualified immunity from suit for their actions.

In that opinion, the 11th Circuit clearly stated its position that the teacher and principal had unconstitutionally punished the student for his viewpoint.

Thus, it is highly likely the 11th Circuit would reverse the district court if there is another appeal.

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

## Your Questions Cont.

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The school doesn't have to create the record, or ask the teacher to update one, but if it has a resume on file, it must provide the required information.

Note, however, that home addresses and phone numbers are not included in the list. That is private information and the school must redact home information before turning over the resume.

Also, if the applicant, for whatever reason, included information about his or her family, or other information that the school is not required to disclose, it should also redact that information.

Qualifications and education for the job may also include your college transcripts, if the school has the transcripts.

It may also be important to rec-

ognize that if the school receives a request for an educator's resume and/or transcripts, the school has 45 days to respond to the request.

This should give the school ample time to parse through the resume and redact any confidential information.

Q: A coach who is not a teacher used unnecessary force to discipline a student. Can the coach be reported to Professional Practices?

A: The Utah State Board of Education has the authority to take action against a teacher, coach's or other educator's **license** for unprofessional conduct. If a coach has a teaching license, he or she could be subject to discipline for using excessive force against students.

More often, however, the non-teaching coach is not a licensed

educator. In that case, the school can take action against the coach, up to and including termination, but the Board has no jurisdiction

> over the coach—if there's no license, there's no action for the Board to take.

If the coach has a contract with the school, discipline should comply with the terms of the contract. If the coach does not have a contract, he or she is an at-

will employee and can be terminated with or without cause or given a lesser form of disciplinary action, such as a letter of warning or reprimand or a suspension.

